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## Town Operations COVID-19 FAQs



In response to questions posed by our members about how COVID-19 affects general municipal operations, the Municipal Assistance Center has assembled the following information related to essential services and functions, closing or limiting access to town offices, requiring the use of face masks, dog licensing, access to public records, processing zoning applications, and tax assessment appeals. Please see all Executive Orders at

<https://governor.vermont.gov/document-types/executive-orders> [2].

For additional information about municipal emergency planning assistance and coordination, please visit our Coronavirus Resources and Recommendations webpage, [www.vlct.org/coronavirus](http://www.vlct.org/coronavirus) [3]

### **[Updated 11/23! Should we limit access to our town office?](#)**

How a town office or town building will remain open due to public health concerns is a decision for each elected official with their own office, the town manager, selectboard, and local health officer to make in consultation with the local emergency management director and the VT Department of Public Health. Town clerks and other independently elected town officers generally set their own office hours and can choose to completely cease or limit their operations until further notice. In MAC's opinion, since the town manager or selectboard has control over town buildings, they may decide to limit their access, regardless of what other independently elected officials decide. To date, the Governor has made no statewide declaration closing town office buildings. However, Governor Scott's Orders, Addenda, and resulting guidance from the VT Agency of Commerce and Community Development (ACCD) provide additional guidance for government functions that can continue in person and safety protocols that must be followed when working in person.

The Secretary of State's Office is keeping an updated list of town office closures/limitations. To see the list, go to <https://sos.vermont.gov/secretary-s-desk/about-the-office/covid-19-response/#MunicipalAssistance> [4]

### **[New 11/23! Do we still have to provide services to the public if we've limited access?](#)**

Yes. The Governor's Amended and Restated Executive Order No. 01-20 clarifies that towns must make their services available to Vermonters seeking to perform authorized functions, such as

recording documents required for real estate, financial, and other legal transactions. The order also requires towns to make services required so that economically disadvantaged populations can access available benefits. Additional guidance for how to provide these services is available at <https://accd.vermont.gov/covid-19/business/stay-home-stay-safe-sector-specific-guidance#municipalities> [5].

### **Updated 11/23! Who has the authority to limit access to a town building?**

Under the town manager form of government, the town manager has “charge and supervision of all public town buildings . . . unless otherwise provided for by the selectboard.” [24 V.S.A. § 1236\(4\)](#) [6]. Therefore, the town manager may make this decision unless the selectboard has made other arrangements. The selectboard or local public health officer may also issue a health order or emergency health order, respectively, to limit access to a town building in order to prevent, remove, or destroy any public health hazard or to mitigate a significant public health risk. [18 V.S.A. §§ 126\(a\), 127\(a\)](#) [7].

### **Do we have to allow members of the general public to use our restroom(s)?**

No. Neither state nor federal law requires restrooms in municipally owned buildings to be open for public use. As with the closing of the town’s buildings, this decision is similarly left to the selectboard or town manager. If use is restricted, then everyone affected should be made aware of this change in policy and steps should be taken to ensure that all restrooms are properly labeled to provide adequate notice.

### **Updated 11/23! How do we respond to a public records request if access to the town office has been limited?**

The Public Records Act (“PRA”) requires that the custodian of a public record must “promptly” produce a record for copying or inspection. “Promptly” is defined by the PRA to mean “immediately, with little or no delay, and, unless otherwise provided . . . not more than three business days from receipt of a request . . . .” [1 V.S.A. § 318\(a\)\(1\)](#) [8]. “Business day” means a day that a public agency is open and providing services. If a town office (e.g. clerk’s office) has limited access to the public, we do not think the town clerk would be violating the PRA by not replying within three days when the office is closed since no business days are expiring. However, this is not very responsive to the needs of the public. This approach may also not be practically feasible unless and until there is a federal or state declaration completely shutting down all government buildings. We recommend working with the requestor and suggesting/using alternative means to accommodate their requests, such as emailing digital copies of records.

### **Updated 11/23! How do we keep functioning if the town buildings have limited access?**

Just because a town building has limited access to the public doesn't mean that it is inaccessible to all town officers and employees who assist them. doesn't mean that it is inaccessible to all town officers and employees who assist them. If, for example, the town clerk’s office has been limited, there are

still ways to accomplish critical business. Here are some suggestions:

- Allow office or vault access by appointment only to minimize crowding and provide the opportunity to practice social distancing;
- Make records available online, if possible; or
- Receive requests by phone or email, research and retrieve the documents requested and then email electronic copies or mail hard copies, for a fee.

## **How do we keep those who staff and access our town buildings safe?**

VLCT has no health protocol recommendations, other than to follow the CDC and Vermont Department of Health's recommendations on social distancing, sanitizing, handwashing, etc. Towns must adhere to the VT Agency of Commerce and Community Development's "Phased Restart Work Safe Guidance" discussed below. Please see our webpage that has links to all these resources: <https://www.vlct.org/coronavirus> [9].

## **Updated 11/23! Can we open for non-essential services or functions?**

Non-essential services and functions are permitted and can only be operated in compliance with the State's "Phased Restart Work Safe Guidance" as authorized by the Governor's Executive Order. This guidance is provided by the VT Agency of Commerce and Community Development (ACCD) and has been changing on a weekly basis. ACCD is the State agency tasked with providing guidance on the Governor's Orders. ACCD has created a "Recovery Resource Center" webpage on COVID-19 at <https://accd.vermont.gov/covid-19> [10].

Particularly relevant to municipalities is the ACCD's "Stay Home Stay Safe Sector-Specific Guidance." This guidance states that municipalities may perform non-essential operations provided they abide by the restrictions set forth in the guidance on the number of employees allowed and adhere to the VT Department of Health (VDH) and the Centers for Disease Control and Prevention (CDC) health and safety guidelines included in the Phased Restart Work Safe Guidance. This document is available at [https://accd.vermont.gov/content/stay-home-stay-safe-sector-specific-guidance#"](https://accd.vermont.gov/content/stay-home-stay-safe-sector-specific-guidance#) municipalities" [11].

For the most up to date guidance on allowable town operations please visit, <https://accd.vermont.gov/news/update-new-work-safe-additions-be-smart-stay-safe-order> [12]. While the State has authorized town offices to reopen and operate, this does not mean that towns must do so at their normal operating capacity. The Governor's Executive Orders and the ACCD's guidance still recommends working remotely as much as possible. The final decision as to whether to fully open town offices, and under what circumstances, continues to rest with the selectboard or town manager. The conditions to and limitations on reopening a town office may be more restrictive than what the State allows, and the public should be notified of them through broad outreach and signage. As with any difficult decision that greatly impacts the local community and crosses multiple lines of authority, VLCT recommends that all local government stakeholders (managers, administrators, legislative bodies, elected officials) coordinate with the local emergency management director in consultation with the Local Emergency Management Plan ("LEMP") and cooperate to consider what town services and functions, beyond essential ones, should operate, while protecting public health. For those with further questions, ACCD has created an online form, accessible at <https://bit.ly/covid-vt-business-operations> [13]. You can also ask the ACCD a question at <https://accd.vermont.gov/covid-19/ask-a-question> [14] or email [commerce.covid19@vermont.gov](mailto:commerce.covid19@vermont.gov) [15].

## **Who decides what functions or services are to be performed?**

The Orders and Addenda regulating town services and functions do not address staffing levels or hours of operations for these services or functions even though the VT Agency of Commerce and Community Development's guidance addresses maximum numbers of employees that may work together in person. The analysis of who has the authority to make this determination in your community is multi-faceted. For employees and most appointed officials, this decision will be made by the selectboard; for those towns operating in a manager form of government, this decision will be made by the municipal manager. Elected officials are independent from the control of other town officials, which means that they are empowered to make these decisions. *Town of Bennington v. Booth*, 101 Vt. 24 (1928). These continued operations and practices must also be conducted in strict adherence to CDC and VDH guidance to ensure recommended social distancing noted above and described in Section 4 of the Order.

## **Can we impose local face covering/mask requirements?**

No, not as of August 1, 2020 which is when Addendum 2 to the Governor's Amended and Restated Executive Order 01-20 goes into effect. This Executive Order requires all Vermonters to wear masks or facial coverings any time they are in public spaces, indoors or outdoors, where they come into contact with others from outside their households and where it is not possible to maintain a physical distance of six feet. This Executive Order amends Section 7(f) of the Amended and Restated Executive Order regarding face coverings and, in doing so, deletes from its language the ability of selectboards to "enact more strict local requirements regarding mask use than those set forth herein." In its place, the new iteration of the Executive Order imposes upon towns the requirement to "implement measures notifying customers or clients of the requirement to wear masks or facial coverings, which may include, but shall not be limited to, posting signage stating that masks or cloth facial coverings are required and denial of entry or service to customers or clients who decline to wear masks or facial coverings." For more information, including printable signage, please visit the VT Agency of Commerce and Community Development's (ACCD) mask mandate webpage at: <https://accd.vermont.gov/covid-19/restart/masks> [16]

## **Are there exceptions to who must wear a facial covering/mask?**

Yes. The Executive Order does not require the use of a facial covering/mask when someone is engaged in a strenuous activity, for any child under the age of 2, by anyone with a medical issue or development challenge that is complicated or irritated by a facial covering/mask, by anyone with difficulty breathing, or by anyone further exempted by the VT Department of Health. If someone refuses to wear a facial covering/mask due to a medical or developmental issue, or difficulty breathing, they are not required to produce documentation, or other evidence, verifying their condition.

## **How do towns enforce the Governor's Executive Order?**

Towns may deny entry to or service in a municipal building to those who refuse to wear facial coverings/masks. Otherwise, the Governor's "mask mandate" has no enforcement mechanism.

## **Our town adopted its own face covering/mask order. What happens to it?**

All local face covering/mask orders, regulations, or ordinances currently in place are expressly preempted on August 1, 2020 by Addendum 2 to the Governor's Executive Order No. 01-20, which imposes a statewide mask mandate. This means that as of the effective date of the Governor's Executive Order, the authority the Governor previously gave towns to impose face-covering/mask mandates per the Amended and Restated Executive Order No. 01-20 has been rescinded and any orders based upon that authority are effectively rendered null and void.

## **Should we take action to quarantine or isolate individuals with, or suspected to have, COVID-19?**

Not without prior consultation with the Commissioner of Vermont Department of Health (VDH). Pursuant to the Governor's Executive Order (Amended and Restated Executive Order No. 01-20: <https://governor.vermont.gov/sites/scott/files/documents/Amended%20and%20Restated%20Executive%20Order%20No.%2001-20.pdf> <sup>[17]</sup>), the Commissioner of VDH oversees, investigates, and coordinates any mitigation efforts for the duration of the Order. All local boards of health must consult with and abide by the recommendations of the Commissioner of VDH prior to taking any action regarding isolation or quarantine of an individual(s). Town health officers must work with and assist VDH as directed by the Commissioner.

## **Can we close town highways for use as outdoor eating, retail, and public gathering spaces?**

Yes. Governor Scott's Addendum 15 to the Stay Home/Stay Safe Order (Executive Order 01-20) allowed restaurants and bars to offer limited outdoor service, though many do not have the capacity to do so. In response, the VTrans has partnered with the VT Agency of Commerce and Community Development (ACCD) to provide the following toolkit to help restaurants and towns evaluate whether to make streets, rights of way, and other public infrastructure available for outdoor dining, retail, or other public gatherings:

<https://accd.vermont.gov/covid-19/business/stay-home-stay-safe-sector-specific-guidance#bars-restaurants-food-service> <sup>[18]</sup>.

Selectboards may temporarily close or restrict the use of town highways for these and other purposes. Specifically, [19 V.S.A. §§ 304](#) <sup>[19]</sup> and [1110](#) <sup>[20]</sup>, [23 V.S.A. § 1112](#) <sup>[21]</sup>, and [24 V.S.A. § 2291\(1\)](#) <sup>[22]</sup> authorize selectboards to restrict or close the use of highways or to just set off portions of highways and sidewalks and regulate their use. This authority is frequently used to prevent damage that might otherwise occur to a highway for example during mud season, but is not limited to those seasonal restrictions. Typically, such decisions are accomplished with the passing of a resolution or ordinance at a duly-warned selectboard meeting.

Regardless of the method employed, if travel in the highway right-of-way is to be restricted in any way, notice must be posted in at least two public places in town and signs provided by the Agency of Transportation must be "conspicuously placed" at each end of the portion of the affected highway. [19 V.S.A. § 1110](#) <sup>[20]</sup>. Selectboards may also place physical barriers in the highway to prevent travel so long as they are clearly visible and accompanied by clear signage. [23 V.S.A. § 1112](#) <sup>[21]</sup>. Towns should consult with their insurance providers and attorneys prior to implementing any restrictions.

## **Updated 11/15! Can we impose stricter standards than the State on liquor sales at bars and clubs?**

Yes, selectboards may, pursuant to Governor Scott's Addendum 3 to the Amended and Restated Executive Order 01-20, prescribe shorter hours for bars and clubs than those set forth in the Rules of the Department of Liquor and Lottery (DLL) for the sale of malt, vinous, spirituous and spirit-based beverages.

The Governor issued Executive Order on November 13, 2020 (Addendum 8 to Amended and Restated Executive Order 01-20, <https://governor.vermont.gov/sites/scott/files/documents/ADDENDUM%208%20TO%20AMENDED%20AND%20RESTATED%20EXECUTIVE%20ORDER%2001-20.pdf> [1]). There are now new restrictions on restaurants, bars, and social clubs.

## **Updated 11/15! Can we impose stricter standards than the State on the size of gatherings?**

Yes. Addendum 3 to Governor's Executive Order No. 01-20 authorizes selectboards to enact local requirements regarding gathering size limitations (whether indoor or outdoor) that are more restrictive than those established by the State. However, the Governor issued Executive Order on November 13, 2020 (Addendum 8 to Amended and Restated Executive Order 01-20: <https://governor.vermont.gov/sites/scott/files/documents/ADDENDUM%208%20TO%20AMENDED%20AND%20RESTATED%20EXECUTIVE%20ORDER%2001-20.pdf> [1]). With this Order, attendance at all public and private social, recreational and entertainment gatherings, indoor and outdoor, including large social gatherings incidental to ceremonies, holiday gatherings, parties and celebrations, are limited to participation with only members of a single household.

## **How are local measures adopted?**

State law authorizes selectboards to adopt, amend, and rescind such rules, orders, and regulations as may be necessary for emergency management purposes so long as they are consistent with those of the Governor or any state agency. [20 V.S.A. § 16](#) [23]. The requirements can be adopted as resolutions (orders) or ordinances (rules) and both must be adopted by majority vote of the selectboard at a duly noticed public meeting. Note that adopting an ordinance also requires adherence to the statutorily prescribed procedures in [24 V.S.A. §§ 1972 et seq](#) [24]

## **How are local measures and Executive Orders enforced?**

If your town adopts a stricter local measure than the State's, your town's first and primary method of enforcement should be educating the public of the order's or ordinance's requirements and requesting voluntary compliance.

If necessary, enforcement of an order would likely be pursuant to 20 V.S.A. § 40, which states in part: "a person who violates any provision of this chapter or any rule adopted under this chapter shall be fined not more than \$1,000.00 for each violation. Each day a violation continues shall be deemed to be a separate violation." 20 V.S.A. § 40(a). Section 40 also allows the Attorney General to bring an

action for injunctive relief (to stop) the violations and compel compliance. We recommend that towns consult with their attorneys before initiating any enforcement action.

On the other hand, adopting an ordinance as opposed to an order will enable your selectboard to individually craft penalties within the statutory limits that would apply to any violation. A municipal ordinance is designated either as a civil or criminal offense and may carry a fine or penalty of up to \$800. A civil ordinance is typically enforced in the Vermont Judicial Bureau, the court with statewide jurisdiction over civil violations. For information on the ordinance adoption process, please review the resources at <https://www.vlct.org/resource/ordinance-notice-requirements-info-sheet> [25].

Enforcement of the Governor's Executive Orders falls under the auspices and is the responsibility of the Office of the Attorney General. According to the Attorney General's Directive to Law Enforcement on the Enforcement of COVID-19 Emergency Order (<https://ago.vermont.gov/wp-content/uploads/2020/04/AGO-EO-Enforcement-Directive-4.3.20.pdf>) [26]) law enforcement who encounter non-compliant businesses or individuals are directed to provide education and request voluntary compliance. If noncompliance continues, law enforcement is to report those issues and the Attorney General's Office will work with law enforcement to develop an appropriate response.

### **[Updated 11/23! What are best practices for notifying the public of our town office limited hours/access?](#)**

A review of town office closure notifications from around the state reveals some best practices when it comes to informing the general public. These best practices include clearly communicating:

- Whether access to the town offices has been limited by, for example, appointments only;
- When the temporary closure will take effect and how long it will be expected to last;
- Why the temporary closure is being instituted (to protect the public health by curbing the spread of COVID-19);
- Staff hours and best methods to communicate with staff;
- Which services the town will continue to provide and how those services will be provided (if only essential services will be provided, defining them in detail);
- Whether public bodies will continue to meet and their schedules;
- Postponement or cancellation of any town-sponsored events/services;
- Emergency contact information;
- A listing of important local, state, and federal resources:
  - Vermont Department of Health [www.healthvermont.gov](http://www.healthvermont.gov)
  - Center for Disease Control [www.cdc.gov](http://www.cdc.gov)
  - COVID-19 resources and information in Vermont: Dial 2-1-1
  - Where to find additional information and future notifications from the town (e.g. town Facebook, Front Porch Forum, or webpage);
- A hopeful word and an appreciation for the public's patience and understanding; and
- Name, title, and contact information of those responsible for the notification.

Samples of town office closure notification can be found on Vermont's Municipal LISTSERV, MuniNet: <https://list.uvm.edu/cgi-bin/wa?A0=muninet> [27].

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## Links

- [1] <https://governor.vermont.gov/sites/scott/files/documents/ADDENDUM%208%20TO%20AMENDED%20AND%20RESTATE%20EXECUTIVE%20ORDER%2001-20.pdf>
- [2] <https://governor.vermont.gov/document-types/executive-orders>
- [3] <http://www.vlct.org/coronavirus>
- [4] <https://sos.vermont.gov/secretary-s-desk/about-the-office/covid-19-response/#Municipal%20Assistance>
- [5] <https://accd.vermont.gov/covid-19/business/stay-home-stay-safe-sector-specific-guidance#municipalities>
- [6] <https://legislature.vermont.gov/statutes/section/24/037/01236>
- [7] <https://legislature.vermont.gov/statutes/section/18/003/00126>
- [8] <https://legislature.vermont.gov/statutes/section/01/005/00318a>
- [9] <https://www.vlct.org/coronavirus>
- [10] <https://accd.vermont.gov/covid-19>
- [11] <https://accd.vermont.gov/content/stay-home-stay-safe-sector-specific-guidance#&quot;municipalities&quot;>
- [12] <https://accd.vermont.gov/news/update-new-work-safe-additions-be-smart-stay-safe-order>
- [13] <https://bit.ly/covid-vt-business-operations>
- [14] <https://accd.vermont.gov/covid-19/ask-a-question>
- [15] <mailto:commerce.covid19@vermont.gov>
- [16] <https://accd.vermont.gov/covid-19/restart/masks>
- [17] <https://governor.vermont.gov/sites/scott/files/documents/Amended%20and%20Restated%20Executive%20Order%20No.%2001-20.pdf>
- [18] <https://accd.vermont.gov/covid-19/business/stay-home-stay-safe-sector-specific-guidance#bars-restaurants-food-service>
- [19] <https://legislature.vermont.gov/statutes/section/19/003/00304>
- [20] <https://legislature.vermont.gov/statutes/section/19/011/01110>
- [21] <https://legislature.vermont.gov/statutes/section/23/013/01112>
- [22] <https://legislature.vermont.gov/statutes/section/24/061/02291>
- [23] <https://legislature.vermont.gov/statutes/section/20/001/00016>
- [24] <https://legislature.vermont.gov/statutes/section/24/059/01972>
- [25] <https://www.vlct.org/resource/ordinance-notice-requirements-info-sheet>
- [26] <https://ago.vermont.gov/wp-content/uploads/2020/04/AGO-EO-Enforcement-Directive-4.3.20.pdf>
- [27] <https://list.uvm.edu/cgi-bin/wa?A0=muninet>